

HOUSE BILL 261
By Shepard

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13, Part 5 and Title 39, Chapter 17, Part 4, relative to controlled substances and criminal offenses committed using controlled substances.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-406, is amended by deleting the word "or" at the end of subsection (e)(1); by deleting the period at the end of subsection (e)(2) and substituting instead a semicolon and the word "or"; and by adding the following language as a new subsection to be designated as follows:

(3) Gama hydroxybutyric acid (some other names include GHB; gamma hydroxy butyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; or sodium oxybutyrate).

SECTION 2. Tennessee Code Annotated, Section 39-17-410, is amended by deleting the word "or" at the end of subsection (c)(10); by deleting the period at the end of subsection (c)(11) and substituting instead a semicolon and the word "or"; and by adding the following language as a new subsection to be designated as follows:

(12) Gama hydroxybutyric acid, and its salts, isomers, and salts of isomers, that is contained in a drug product for which an application has been approved under Section 505 of the federal Food, Drug and Cosmetic Act.

SECTION 3. Tennessee Code Annotated, Section 39-17-412, is amended by deleting the word "or" at the end of subdivision (f)(4) and substituting instead a period; by adding the word "or" at the end of subdivision (f)(1); by deleting subsections (f)(2) and (f)(4); and by renumbering accordingly.

SECTION 4. Tennessee Code Annotated, Section 39-17-402, is amended by deleting from item (4) the language "inclusive"; and substituting instead the language "inclusive, or a controlled substance analogue";.

SECTION 5. Tennessee Code Annotated, Section 39-17-402, is further amended by deleting the word "and" at the end of item (25); by deleting the period at the end of item (26) and substituting instead a semicolon and the word "and"; and by adding the following language as a new item to be designated as follows:

(27) "Controlled Substance Analogue" means a substance that is intended for human consumption and that either:

(a) Has a chemical structure substantially similar to the chemical structure of a drug or substance in Schedules I or II; or

(b) Produces a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant depressant, or hallucinogenic effect on the central nervous system produced by a drug or substance in Schedule I or II; or

(c) Is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system produced by a drug or substance in Schedules I or II.

For purposes of this part, the illicit manufacturing, sale, possession, or use of a controlled substance analogue shall be treated as if it were the Schedule I or II substance to which it is substantially similar in chemical structure, pharmacological effect, or intended or represented effect.

“Controlled Substance Analogue” does not mean any of the following:

(1) Any substance for which there is an approved new drug application as defined under Section 505 of the federal Food, Drug and Cosmetic Act, or which is generally recognized as safe and effective for use pursuant to Sections 501, 502, 503 of the federal Food, Drug and Cosmetic Act, and United States Code Title 21, Section 330, et seq.

(2) With respect to a particular person, any substance for which an exemption is in effect for investigational use for that person pursuant to Section 505 of the federal Food, Drug and Cosmetic Act, to the extent that the conduct with respect to that substance is pursuant to the exemption.

(3) Any substance, before an exemption as specified in paragraph (2) takes effect with respect to the substance, to the extent the substance is not intended for human consumption.

SECTION 6. Tennessee Code Annotated, Section 39-17-417, is amended by deleting subsections (a) and (b) in their entirety and substituting instead the following:

(a) It is an offense for a defendant to knowingly:

- (1) Manufacture a controlled substance or controlled substance analogue;
- (2) Deliver a controlled substance or controlled substance analogue;
- (3) Sell a controlled substance or controlled substance analogue; or
- (4) Possess a controlled substance with intent to manufacture, deliver, or sell such controlled substance or controlled substance analogue.

(b) A violation of subsection (a) with respect to a Schedule I controlled substance, a controlled substance analogue of a Schedule I substance, or gamma hydroxybutyric acid as listed in § 39-17-410, is a Class B felony and, in addition thereto, may be fined not more than one hundred thousand dollars (\$100,000).

SECTION 7. Tennessee Code Annotated, Section 39-17-418, is amended by deleting from subsection (a) the language “exchange a controlled substance” and substituting instead the language “exchange a controlled substance or a controlled substance analogue”.

SECTION 8. Tennessee Code Annotated, Section 39-17-418, is further amended by deleting from subsection (a) the language “possession of a controlled substance” and substituting instead the language “possession of a controlled substance or a controlled substance analogue”.

SECTION 9. Tennessee Code Annotated, Section 39-13-503, is amended by deleting from subsection (c) the language “a controlled substance” and substituting instead the language “a controlled substance or a controlled substance analogue”.

SECTION 10. This act shall take effect July 1, 2003, the public welfare requiring it.